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TAGS: [PREL](#) [PGOV](#) [ETTC](#) [KNNP](#) [KSTC](#) [PARM](#) [TSPA](#) [IN](#) [NSSP](#)

SUBJECT: INDIA COMPLETES THE NSSP, STILL PONDERING PSI

REF: A. STATE 129958

[1](#)B. STATE 127794

[1](#)C. STATE 112244

Classified By: Charge Robert O. Blake, Jr. for Reasons 1.4 (B, D)

[1](#)1. (S) Summary: Paving the way for completion of the NSSP, MEA Additional Secretary (International Security) Meera Shankar delivered two non-papers to the Charge and PolCouns on July 14, one responding to USG questions about implementation of the WMD Bill (see text in para 5 and initial analysis in para 6) and the second listing GOI efforts on industry outreach and preventive enforcement (see text in para 12 and initial analysis in para 13). Shankar confirmed that the Cabinet had approved harmonization with the MTCR and NSG guidelines and the new export control list was undergoing "post-approval procedures," but declined to estimate when the new list would be made public. Based on our initial review, we believe these non-papers meet the remaining requirements to complete the NSSP, including adoption of the MTCR definition of "missile." On India's acceptance of the PSI Statement of Principles, Shankar stated that the GOI will await formal notification of the termination of the Core Group before it considers other legal questions it has about the initiative. End Summary.

Agreement on Harmonization

[1](#)2. (S) Charge shared with Shankar the non-paper Under Secretary Joseph gave to Indian Ambassador Sen on July 11

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outlining the final steps for completion of the NSSP (Ref A), including harmonization of India's national control list with the MTCR and NSG. Glancing at the paper, Shankar confirmed that the Cabinet had approved harmonization and the new export control list was "currently undergoing post-approval procedures," i.e., publication in the Indian equivalent of the Federal Register. Noting that "private adherence" to the international control regimes would suffice for now, PolCouns expressed hope that the GOI would publicly adhere in the future. PolCouns also pressed for more details about the mechanics of the "post-approval procedures," including when the list might be made public. Pressed on timing, she only repeated, "soon." Shankar demurred to give further details or an estimated date to release the new export control list, saying only that it would be "soon."

Waiting for the Space Launch Agreement

[1](#)3. (C) After delivering the GOI non-papers, Shankar stated, "We consider we've fulfilled our obligations under the NSSP," then remarked that the GOI was still awaiting a response from the USG on the Space Launch Agreement. Charge noted that unresolved issues on space cooperation had been separated from the rest of the initiatives and would not prevent the completion of the NSSP as a whole.

Still Pondering PSI

[1](#)4. (C) In light of the pending decision to dissolve the PSI Core Group (Ref B), Charge asked whether the GOI would announce acceptance of the PSI Statement of Principles during the PM's visit to Washington. Shankar stated that the GOI would await "more formal communication on the dissolution" of the Core Group, but still needed to have internal discussions about the legal aspects of interdiction.

Non-Paper Responding to Questions about the WMD Bill

[1](#)5. (C) Begin text of GOI non-paper:

Weapons of Mass Destruction and their Delivery Systems
(Prohibition of Unlawful Activities Act) 2005
(Restricted-Releasable USG only)

[1](#)A. (No part of this non-paper is quotable authority for any activity prohibited or regulated under the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 or other relevant Acts. This non-paper is not meant for submission to any judicial

process.)

B. Over the years, through the creation of laws, regulations and administrative mechanisms, India has instituted an effective domestic regime to exercise controls over the export of materials, equipment and technologies of direct or indirect application to weapons of mass destruction and their means of delivery. GOI has also taken measures to update its system of export controls through creation of new laws, legislative amendments, amendments to existing policy and procedures, strengthening of licensing procedures, firming up the administrative mechanisms in place, enhanced inter-ministerial coordination and enforcement related aspects, details of which have been shared with the USG from time to time.

C. The WMD Act, 2005 is an integrated and over-arching legislation on prohibiting unlawful activities in relation to weapons of mass destruction and their delivery systems. It builds upon the existing extensive regulatory framework related to controls over the export of WMD-usable materials, equipment and technologies. The Act criminalizes a range of unlawful activities in relation to weapons of mass destruction and their means of delivery. It prohibits any person not duly authorized by the Central Government to deal with them. It prohibits unlawful possession, manufacture, transportation, acquisition, or development of a weapon of mass destruction (nuclear weapon or other nuclear explosive device, chemical weapon or biological weapon) or its means of delivery.

D. The WMD Act, 2005 fulfills the three core objectives of: (i) prohibiting unlawful activities related to weapons of mass destruction and their delivery systems, (ii) prohibiting transfers of WD-usable goods and technologies to terrorists and the transfer of radioactive or fissile material for use in terrorist acts, and (iii) updating controls over the export of WMD-usable goods and technologies.

E. Section 13(1) provides the authority to regulate export, transfer, retransfer, transit or trans-shipment of items and technologies notified under this Act or any other relevant Act. This is a regulatory provision, and not a prohibitory one. Section 3 elaborates the extent and application of the Act, which includes any person who commits an offense beyond India. The definition of "re-transfer" at Section 4 (k) makes its applicability to foreign entities abundantly clear. Re-transfer controls are already being exercised under existing regulations and procedures. "Re-exports" from India, with or without value addition, of imported items that are controlled on the national export control lists are already subject to the same restrictions and procedures under existing policy and procedures as are applicable to exports (clause 2.35 of the foreign Trade Policy).

F. The Act imposes a general prohibition on brokering in a transaction that is prohibited or regulated under the Act. Section 12 read with Section 3 delineates the applicability of this provision to citizens of India residing in India and Indian citizens abroad. In addition, Section 12 on prohibition on brokering is applicable to all residents of India, including foreigners while in India. The provision is applicable to items not originating in India and to transactions that occur wholly outside India, in such items fall within the scope of this Act.

G. The extent and application of Sections 14-17 are as per the provisions of Section 3 which includes citizens of India outside India. The existence or otherwise of compensation for facilitation is not a condition for the applicability of these Sections.

H. Section 11 on prohibition of export is applicable to any item whether or not notified on the national export control lists if the exporter knows that the item is intended to be used in the design or manufacture of a weapon of mass destruction or in its missile delivery system. The implementation of the provision is sought to be facilitated by maintaining internal watch lists of suspect end-users which will be selectively or as required shared with the exporter community. Public notification of suspect end-users or activities is not envisaged. Section 11 covers transfers of technology as defined in Section 4(1).

I. Section 13 provides for controls over the transfer of technology as defined in Section 4(1) by regulating its flow from India or by Indians abroad as well as to foreigners while in India. No clarification of the provisions is required. The term person is not limited to individuals but encompasses juridical persons also. It includes any company or association or body of persons, whether incorporated or not.

J. Definitions of the terms "specially designed" or "capable of" are proposed to be notified as part of the exercise that is currently underway to revise the national export control

lists. The requirement for additional end-use conditions for export of items or technology that bear the possibility of diversion to or use in the development or manufacture of, or use as, systems capable of delivery of weapons of mass destruction is also proposed to be covered.

1K. Though Section 6 authorizes the appointment of Advisory committees by the Central Government for the purposes of this Act, the establishment of a new agency is not currently envisaged. Government has a vast infrastructure in place to facilitate the enforcement of the provisions of this Act. During the exchanges held as part of the bilateral program of cooperation on export controls, presentations have been made to USG delegations by relevant GOI agencies on the spectrum of issues related to export controls and on the inherent strengths of the GOI system and how it is being gradually oriented to export controls. End text of GOI non-paper.

Initial Analysis of WMD Bill Implementation: Looks Good

16. (C) The GOI non-paper reviews the objectives of the WMD Bill and provides further clarification on specific issues such as the scope of the law, definitions (e.g., "missile"), re-export, brokering, catch-all provisions, and intangible technology transfer (Ref C). The non-paper also states that the WMD Bill is not stand alone legislation, but must be read in conjunction with previously existing GOI laws and regulations, e.g., the Foreign Trade Policy. Issues of particular interest are noted below:

17. (C) Definition of Missile (para J): The non-paper states that the MTCR definition of missile as well as additional end-use conditions will be incorporated into the implementing regulations.

18. (C) Re-Transfer and Re-Export (para E): Section 13(1) of the WMD Bill provides the authority to regulate -- not prohibit -- the export, transfer, retransfer, transit or trans-ship items and technologies, and applies to any person in or beyond India.

19. (C) Brokering (para F): All Indian citizens in India or abroad, as well as foreigners in India are subject to this law. It is also applicable to items not originating in India and to transactions that occur wholly outside India.

110. (C) Catch-all (para H): The non-paper indicates that the Bill is applicable to any item whether it is specified on the national export control lists or not if the exporter knows that the item is intended to be used in the design or manufacture of a WMD or its delivery system. Internal watch lists of suspected end-users and activities will be maintained for GOI use, but public notification of suspected end-users or activities is not envisaged.

111. (C) Intangible Technology Transfer (para I): The WMD Bill controls intangible technology transfer by regulating its flow from India or by Indians abroad as well as to foreigners while in India, including to businesses or associations.

Non-Paper on Industry Outreach/Preventive Enforcement

112. (U) Begin text of GOI non-paper:

GOI Efforts on Industry Outreach and Preventive Enforcement

1A. The Government of India is fully conscious of the importance of partnership with the industry for the success of its export control system.

1B. Outreach meetings are conducted by relevant Departments of the Government to increase awareness among the exporter community about the GOI system of export controls, relevant laws, regulations and procedures, and any amendments made therein. DGFT and its 32 regional offices spread across the country conduct outreach meetings with the exporter community, including through open house meets and personal interviews. This existing infrastructure is available for industry outreach efforts on export controls. Department of Chemicals and Petrochemicals routinely conducts region-wise outreach meetings to increase awareness among the exporters about the dual-use nature of the controlled chemicals and the importance of exercising due diligence. Department of Bio-technology has also held outreach meetings.

1C. The authority to conduct industry outreach activities flows from the relevant clauses in the Handbook of Procedures (Vol. 1), 2004-2009 notified under the Foreign Trade Policy which provide for the Directorate General of Foreign Trade, Ministry of Commerce to organize industry outreach meetings on a regular basis for exporters, in particular those dealing with SCOMET items, in close coordination with the relevant administrative Ministries/Departments.

1D. Efforts are underway to encourage the involvement of the industry associations and chambers to conduct outreach events. Department of Chemical and Petrochemicals, for instance, works in close coordination with associations such as the Indian Chemicals Manufacturers Association (ICMA). The assistance of cross-sectoral industry associations such as the CII and FICCI has also been solicited. There are a number of sector-specific industry associations in the field of aerospace technologies, chemicals, machine tools, etc. which are proposed to be involved in the Government's outreach effort.

1E. In organizing such events, there is recognition of the importance of conducting a mix of sector-specific and region-wise programs with a view to reach out to targeted audiences and it is proposed to accordingly structure the location, periodicity, and content of the outreach events.

1F. Government has established an inter-ministerial group to make recommendations regarding specific measures on outreach to the industry on export controls and to evolve a department-wise but coordinated approach on the matter. These inter-ministerial consultations are presently underway, and are inter alia focusing on issues such as outreach through electronic means, circulations of print material, dissemination of information about the recently enacted Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 and the proposed revision of the lists and notification of the general criteria for licensing.

1G. Various agencies of the Government are empowered to enforce the provisions of the laws of the rules, regulations and orders issued thereunder, which form the legal and regulatory basis of India's system of export controls. Exporters are expected to comply with the provisions of the applicable laws and regulations. Legislative provisions are in place for initiating quasi-judicial, departmental proceedings on the enforcement side, which may involve seizure/confiscation and imposition of penalties for SCOMET items exported or attempted to be exported in violation of existing GOI export control regulations. Export or attempt to export in violation of export control regulations is also liable to criminal prosecution.

1H. Concerted efforts are under way to enhance inter-ministerial coordination on preventive enforcement. Pre-license checks on end-users are conducted as appropriate through the intelligence agencies and our Missions abroad prior to the issue of license. Guidelines on pre-license checks have been issued. Risk management-assessment of exports is done at the implementation level with the objective of making it administratively possible for Customs officials to check exports from India with a view to ensure that all the relevant laws and regulations are being followed. SCOMET controls have been incorporated as an important parameter into the GOI Risk Management System, and a briefing on the same was provided to the USG team that participated in the workshop on risk management and targeting held in New Delhi in April 2005.

1I. Government has established an inter-agency group under the chairmanship of the Ministry of External Affairs to examine intelligence made available on potential transactions to suspect destinations. This inter-agency group meets regularly and also works in close coordination with the Inter-Ministerial Working Group that considers export license applications, which is chaired by DGFT.

1J. GOI has also constituted a Core Group on Training on SCOMET Enforcement under the aegis of the Central Board of Excise and Customs. The Core Group is comprised of representatives of the Ministry of Home Affairs, Department of Chemicals and Petrochemicals, Department of Biotechnology, Defense Research and Development Organization, Department of Atomic Energy, Directorate General of Foreign Trade, relevant intelligence agencies, and the Ministry of External Affairs. End text of GOI non-paper.

Initial Analysis on Outreach/Preventive Enforcement

113. (SBU) The non-paper notes an existing network of 32 regional offices of the Directorate General for Foreign Trade (DGFT) that already does outreach and can be further utilized to educate industry and local governments about upcoming changes to India's export control regulations. Further, it states that the GOI has established an inter-ministerial group to make recommendations and coordinate future outreach activities.

114. (SBU) A similar approach is taken on preventive enforcement, with an inter-ministerial group chaired by MEA to coordinate intelligence sharing between the various GOI agencies and missions abroad, as well as a separate inter-ministerial group chaired by Customs to conduct

training on enforcement. The non-paper also reflects GOI implementation of issues covered by EXBS workshops such as "Targeting and Risk Management."

BLAKE